Per G.S. Singhvi, CJ

The appellants, who appear to have become victims of the widespread fraudulent practices being adopted by the private educational institutions, sought intervention of the Court for protecting their admission in First year M.B.A. course in Christu Jayanthi Jubilee College, Vidyanagar, Guntur, (for short 'the College') but could not persuade the learned Single Judge to entertain their prayer for being allowed to continue their studies and this is the reason why they have filed appeal under Clause 15 of the Letters Patent for setting aside order dated 06-12-2005 passed in Writ Petition No.26081 of 2005.

The appellants are said to have passed the Degree examination through Distant Education 10 + 1 + 3 or 10 + 3 mode. They applied for appearing at the Integrated Common Entrance Test (ICET) conducted by Kakatiya University, Warangal for admission to I year MBA / MCA Degree course for the academic year 2005-06. They are said to have passed the test, but their merit was not high enough so as to entitle them to be admitted against the regular seats notified by the State Government. They were admitted by the management of the College against the minority / management quota. However, Acharya Nagarjuna University (for short 'the University') to which the College is affiliated did not approve their admission on the ground that they were not qualified to appear in the Integrated Common Entrance Test.

The appellants challenged the decision of the University by asserting that the management of the College had admitted them keeping in view the qualifications specified in the instruction booklet issued by Kakatiya University for entrance test.

The learned Single Judge dismissed the writ petition by recording the following observations:

> It is not in dispute that the eligibility for being admitted in the first year of M.B.A. course is a pass in degree examination in the pattern of 10 + 2 + 3. The petitioners passed their respective examinations through correspondence courses and they did not study the intermediate course. It is true that the petitioners have appeared in the common entrance examination. However, the purpose of entrance examination is only to select the candidates in the event of seats being not available in adequate number. The appearance in the entrance examination does not confer

the qualification on the candidate, if he is, otherwise, not entitled to. The fact that the entrance examination was held even before the results of qualifying examinations are declared, supports this point of view. At any rate, the petitioners were not selected by the convener, and they were admitted by the management against the minority quota.

It is not known as to whether any candidates, who do not hold the requisite qualification, were admitted or such admissions were approved. Even assuming that there exist such instances, they hardly constitute the basis for regularization of admissions of otherwise unqualified candidates. The college-management ought to have been careful in apprising the petitioners, of the rule position. This court does not grant any relief to the petitioners.

Mr. M. Subba Reddy, learned counsel for the appellants, made strenuous efforts to persuade us to adopt a compassionate approach and protect the interest of his clients by arguing that they fulfilled the condition of eligibility specified in paragraph 1(II) of the Instructions Booklet issued by the Kakatiya University for the purpose of holding the entrance test. As against this, learned counsel for the University emphasized that the appellants, who did not possess the qualifications prescribed under the statutory rules, could not have been admitted and the authority concerned did not commit any illegality by refusing to recognize their admissions.

We have considered the respective submissions. It is not in dispute that admissions into MBA / MCA professional courses are governed by the A.P. Regulation of Admissions into MBA / MCA Professional Courses through Common Entrance Test Rules, 2003 (for short 'the Rules') which have been framed by the State Government in exercise of its powers under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short 'the Act'). Rule 4 of the Rules, which prescribes the conditions of eligibility for admission to M.B.A./M.C.A. courses reads as under:

"**4. Eligibility for Admission:**

The eligibility criteria in respect of Nationality and Domicile, Educational Qualifications for admission into the Post Graduate Courses of MBA and MCA shall be as follows:

i. The Candidate shall be of Indian Nationality.

ii. The candidate should have passed the qualifying examination (10+2+3) or equivalent on the date of his/her Counselling for admission, and should have secured a rank at "Integrated Common Entrance Test" conducted by the State and should satisfy other conditions as laid down in the Rules.

iii. The candidate should satisfy Local/Non-Local status requirement as laid down in the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 as amended in G.O.P.No.646, Edn (W) Dept., dt.10-07-1979."

A reading of the rule reproduced above makes it clear that for admission to M.B.A./M.C.A. courses a candidate should have passed the qualification examination (10+2+3) or equivalent on the date of his/her counselling for admission and should have secured a rank at ICET conducted by the State. Admittedly, none of the appellants possessed the above noted qualification on the date of his/her counselling. Therefore, they were not entitled to be considered for admission to M.B.A. course. Notwithstanding this, the management of the College admitted them against minority / management seats. This action of the management was not approved by the University. The learned Single Judge did not find fault with the decision of the University and dismissed the writ petition filed by the appellants by observing that they were not eligible to be admitted to the course.

In our opinion, the appellants who do not fulfill the eligibility criteria prescribed under Rule 4 of the rules were not entitled to be considered for admission in the MBA course and the concerned authority of the University did not commit any illegality by refusing to approve the action of the management of the College. It is true that the appellants must have deposited fee in the College and undertaken studies for sometime, but this, by itself, cannot be a ground for issuance of a mandamus to the University to regularize their admissions ignoring that they do not fulfill the statutory condition of eligibility prescribed in the rules.

Learned counsel made a feeble attempt to convince us that the action taken by the University should be nullified on the ground of discrimination by

pointing out that another candidate who has passed only 10+2 examination was admitted to M.B.A. course and her admission has not been disturbed. We are afraid, there is no substance in the argument of the learned counsel. It is trite to say that Article 14 can be invoked by the High Court for bringing about equality or for protecting a citizen against discrimination practice by the State or its instrumentalities. It is equally trite to say that writ of mandamus cannot be issued for compelling a public authority to commit illegality or pass an illegal order merely because in some other case such illegality was committed or illegal order has been passed.

This view of ours is supported from the judgments of the Supreme Court in **Chandigarh Administration v. Jagjit Singh**, **Secretary, Jaipur Development Authority v. Daulat Mal Jain**, **Gursharan Singh v. New Delhi Municipal Committee**, **Faridabad CT. Scan Centre v. D.G. Health Services** and **Style (Dress Land) v. Union Territory, Chandigarh**.

The facts of **Jagjit Singh**[1](supra) were that the respondents who had given the highest bid for 338 sq. yds. Plot in Sector 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt.Prakash Rani, Administrator had restored the plot even after her writ petition was

dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:

> "We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. *Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order*. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in

accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)

In **Secretary, Jaipur Development Authority v. Daulat Mal Jain**[2] (supra), the Supreme Court held as under:

"The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

In **Gursharan Singh v. New Delhi Municipal Committee**[3] (supra)

"Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committee in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committee by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law."

In **Faridabad CT. Scan Centre v. D.G. Health Services**[4] (supra), the

three Judges Bench of the Supreme Court over ruled the earlier decision of the two Judges Bench and held:

> "Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others."

For the reasons mentioned above, the appeal is dismissed. However, we give liberty to the appellants to sue the College for award of damages for having caused injury to their career by granting admission to them notwithstanding the fact that they were not eligible for the same.

G.S. SINGHVI, C.J.

Date:19-12-2005

R. SUBHASH REDDY, J

PV / svs

HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No.2475 OF 2005

Between:

Ms. Bandlamudi Sirisha, D/o. B. Manikya Rao,

aged 22 years, Vidyanagar, Ist Lane, Guntur

and two others

.. Appellants

AND

Acharya Nagarjuna University

Rep. by its Registrar, Nagarjuna Nagar,

Guntur – 522 510.

.. Respondents

::JUDGMENT::

Counsel for the Appellants : Mr. M. Subba Reddy

Counsel for the Respondent : S.C. for Nagarjuna Univ.

19th December, 2005